80-1099

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1980

NO.

STATE OF ALABAMA,

Petitioner,

vs.

BILLY BATTLES,

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT AND COURT OF
CRIMINAL APPEALS OF ALABAMA

BRIEF OF AMICUS CURIAE

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I

INTEREST OF THE AMICUS CURIAE

The State of Florida is an interested party in this case because the state courts of Alabama have usurped the right of the Executive Branch of the State of Florida to extradite under the provisions and powers granted and controlled only by Art. IV, §2, Cl. 2, of the United States Constitution. By issuing Respondent a writ of habeas corpus, the courts of Alabama have frustrated Florida's right to bring criminal defendants to trial for offenses against the laws of the State of Florida.

II

REASONS FOR GRANTING THE WRIT

The State of Florida agrees with Petitioner's formulation of the issue involved in this case, i.e., that this

case presents the question this Court declined to answer in Michigan v. Doran, 439 U.S. 282 (1978). The question which must be decided is whether Art. IV, §2, Cl. 2, of the United States Constitution requires that the extradition papers forwarded by the demanding state require a formal recitation by a magistrate that probable cause has been found that a crime has been committed and that the accused committed it.

Article IV, §2, Cl. 2, of the United States Constitution controls extraditions of this type and explicitly provides:

> "A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."
>
> (Emphasis added.)

It cannot be disputed that Florida's Rules of Criminal Procedure for charging crimes by information comport with the mandates of the United States Constitution. In Gerstein v. Pugh, 420 U.S. 103, 119 (1975), this Court stated:

> "We adhere to the Court's prior holding that a judicial hearing is not prerequisite to prosecution by information. Beck v. Washington, 369 U.S. 541, 545 (1962); Lem Woon v. Oregon, 229 U.S. 586 (1913)."

The Court also stated that a conviction will not be vacated on the ground that a defendant was detained pending trial without having had a determination of probable cause.

In Gerstein, the Court recognized that there was no single preferred pretrial procedure and that the various states would differ concerning what type

of pretrial probable cause determination would be required. The Court suggested that it might be found desirable to make the probable cause determination at a suspect's first appearance before a judicial officer, citing McNabb v. United States, 318 U.S. 332, 342-344 (1943). It is precisely this type of procedure which Florida has adopted. Fla.R.Crim.P. 3.131(a)(1) provides:

> "(a) Nonadversary Probable Cause Determination.
>
> (1) Defendants in Custody. In all cases where the defendant is in custody, a nonadversary probable cause determination shall be held before a magistrate within 72 hours from the time of the defendant's arrest; provided, however, that this proceeding shall not be required when a probable cause determination has been previously made by a magistrate and an arrest warrant issued for the specific offense for which the defendant is charged. The magistrate for good cause may continue the proceeding for not more than 24 hours beyond the above 72-hour period. This determination shall be made if

> the necessary proof is available at the time of the first appearance as required under Rule 3.130, but the holding of this determination at said time shall not affect the fact that it is a nonadversary proceeding."

Thus, in Florida, the Fourth Amendment's proscription against unreasonable searches and seizures addressed in Gerstein is achieved by a prompt probable cause determination by a neutral magistrate within, at most, 96 hours of a defendant's arrest. It is extremely critical to note that Gerstein concerned the Fourth Amendment's proscription against unreasonable searches and seizures (of persons). Thus, the mandates of Gerstein would not become applicable to an extradition proceeding until the demanding state obtained custody of the defendant. The applicability of Gerstein relates directly to the probable cause determination made

by a neutral magistrate in order to justify continued detention in accordance with the rights guaranteed all citizens under the Fourth Amendment. Gerstein has in no way altered nor could it do so, Art. IV, §2, Cl. 2, of the United States Constitution which requires only that the accused be charged with a crime in the demanding state.

This Court has long recognized that "extradition is a mere proceeding in securing arrest and detention." In re Strauss, 197 U.S. 324 (1905). As such, extradition proceedings have traditionally been interpreted to be summary and mandatory between or among the executive authorities of the various states. Strauss, supra; Biddinger v. Commissioner of Police, 245 U.S. 128 (1906); Michigan v. Doran, supra; Pacileo v. Walker, ___U.S.___, 28

Cr.L. 4119 (1980). These cases have all recognized that extensive judicial inquiry:

> "in the asylum state of issues that could be fully litigated in the charging state would defeat the plain purposes of the summary and mandatory procedures authorized by Art. IV, §2." Pacileo, supra, quoting from Michigan v. Doran at 439 U.S. 290.

See also Sweeney v. Woodall, 344 U.S. 86 (1952), where it was held that a fugitive from the demanding state could not raise in the federal courts of the asylum state the constitutionality of confinement in the demanding state.

It is clear that a governor's grant of extradition is prima facie evidence that the constitutional and statutory requirements have been met. Doran, supra, at 290; Pacileo, supra. The Court's recent extradition decisions

have reiterated that once the governor of the asylum state has granted extradition, a court's review on habeas corpus is extremely limited. A court in the asylum state, "can do no more than decide:

> (a) whether the extradition documents on their face are in order;
> (b) whether the petitioner has been charged with a crime in the demanding state;
> (c) whether the petitioner is the person named in the request for extradition; and
> (d) whether the petitioner is a fugitive.

These are historic facts readily verifiable." Doran, at 290; Pacileo.

However, the record reveals that the state courts of Alabama, ostensibly relying on Alabama's version of the Uniform Interstate Extradition Act (§ 15-9-31, Code of Alabama 1975, p.20 Petition for Writ of Certiorari) inquired

into the legal sufficiency of the affidavit obviously to determine if it stated probable cause. This inquiry is in violation of the United States Constitution as interpreted by this Court in Doran, supra and Pacileo, supra because such inquiry focused on legal issues which should have been litigated in the State of Florida. Not only is this reliance on Alabama's extradition statute misplaced but also the court's conclusion was incorrect based on the content of the extradition papers.

The opinion of the Alabama Court of Criminal Appeals in Respondent Battles' case, found at Appendix B of the State of Alabama's Petition for Writ of Certiorari, emphasized that there was no affidavit or warrant attached to the information filed. (Petition for Writ of Certiorari at 23.) However, under

Florida law, there is no requirement that an information have a supporting affidavit or warrant attached to it. See Fla.R.Crim.P. 3.140(g), which requires that:

> "(g) Signature, Oath, and Certification; Information.
>
> An information charging the commission of a felony shall be signed by the state attorney, or a designated assistant state attorney, under oath stating his good faith in instituting the prosecution and certifying that he has received testimony under oath from the material witness or witnesses for the offense. An information charging the commission of a misdemeanor shall be signed by the state attorney or a designated assistant state attorney, under oath stating his good faith in instituting the prosecution. No objection to an information on the ground that it was not signed or verified, as herein provided, shall be entertained after the defendant pleads to the merits."

Florida's appellate courts have interpreted this rule to mean that a valid information charging a felony

must contain a statement by the prosecutor which certifies that the facts upon which the prosecution is based have been sworn to by the material witnesses. State v. Williams, 362 So.2d 678 (Fla. 4th Dist.Ct.App. 1978).

The Alabama Court of Criminal Appeals also emphasized the fact that the affidavit which supported the application for requisition was made by an investigator for the state attorney's office and that there was no showing of personal knowledge on the part of the investigator, and there was no basis to judge reliability of the facts asserted in the affidavit. (Petition for Writ of Certiorari at 17.) Again however, this is not required under Florida law. In State v. Bacon, 385 So.2d 1160 (Fla. 2nd Dist.Ct.App. 1980), the court rejected

the argument that an information which is not based on a valid indictment must be supported by a sworn affidavit of some person who knows the facts and will testify at trial. The court stated:

> "[W]e cannot fathom just where appellee got that notion, and he has not appeared in this court to explain his position. One thing is certain--the Rules of Criminal Procedure in this State contain no such requirement." Bacon at 1163.

These misconstructions of Florida's law made by the criminal courts of Alabama demonstrate the wisdom behind this Court's traditional position that such determinations of foreign law should not and can not be made in the asylum state. Pacileo, supra; Doran, supra. If probable cause to support the information is in fact going to be litigated, the courts of the demanding state can better interpret the applicable law. Once Battles is re-

turned to the State of Florida, he will receive a probable cause determination hearing within 96 hours. See Fla.R.Crim.P. 3.131, reprinted in its entirety at Appendix D of the State of Alabama's Petition for Writ of Certiorari. Alabama's attempt to look behind the extradition papers in order to test their legal sufficiency is directly prohibited by Doran, supra, Pacileo, supra and numerous other cases decided by this Court.

Moreover, even assuming that Alabama has the right to examine the legal sufficiency of the extradition papers in question, the information filed against Respondent did contain an affidavit of the State Attorney directly on its face. See Williams, supra. Also, Alabama's statute (§15-9-31) itself does not require anything more than "an in-

formation supported by affidavit. . . ." Neither probable cause, the date of the affidavit, nor any other standard of legal sufficiency is addressed. Therefore, this requirement of Alabama state law was satisfied by either the State Attorney's affidavit on the face of the information or the affidavit of the State Attorney's investigator. In essence, the state courts of Alabama exceeded their authority by examining the legal sufficiency of Respondent's extradition papers. This error was compounded by an erroneous conclusion based upon incorrect interpretations of Florida state law.

CONCLUSION

Extradition has traditionally been a summary and mandatory procedure between or among the executive authorities of the states involved. Pacileo, supra; Doran, supra. Article IV, §2, Cl. 2, of the United States Constitution controls extradition proceedings of this type and requires merely that a defendant who is to be extradited be charged with a crime in the demanding state. If the governor of the asylum state grants extradition, this is prima facie evidence that the constitutional and statutory provisions have been met. Consequently, the courts of the asylum state should not be permitted to allow plenary review of issues which, if litigated at all, should be reviewed in the courts of the demanding state which are best suited to evaluate applicable state law.

Review must be granted in this case because the court has not yet answered the question of whether a judicial determination of probable cause in the demanding state is necessary before extradition can be granted. The decision in Gerstein v. Pugh, supra, requires only that a judicial determination of probable cause be made promptly after detention is effected. Florida's Rules of Criminal Procedure accomplish this mandate by affording all criminal defendants a probable cause determination within 96 hours of arrest. The state courts of Alabama are in no position to tell either the Governor of the State of Florida or the courts of Florida how to interpret Art.IV, §2,

Cl. 2, of the United States Constitution. Rather, that responsibility is limited to this Court, which has consistently held that plenary review in the asylum state of issues which should be litigated in the demanding state is not permitted. Doran, supra; Pacileo, supra.

Therefore, since the question of when the probable cause determination must be made was not answered in either Gerstein, supra, or Doran, supra, the Court should grant review of this case. The case is important because state courts of Alabama, as well as the state courts of all the other states, have no authority to usurp the powers of the respective executive authorities of the states on extradition matters guaranteed and controlled only by the United States Constitution. The State of Florida

agrees with the position advanced by the State of Alabama in its Petition for Writ of Certiorari and respectfully requests that the Court issue a Writ of Certiorari to review and correct the opinion of the Criminal Court of Appeals of Alabama.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Amicus Curiae has been forwarded to The Honorable Charles A. Graddick, Attorney General of Alabama, and Joseph G. L. Marston, III, Assistant Attorney General of Alabama, 250 Administrative Building, 64 N. Union Street, Montgomery, Alabama 36130; and Myron Allenstein, Esquire, Attorney at Law, 141 So. Ninth Street, Gadsden, Alabama 35901, Counsel for Respondent Battles, this _____ day of January, 1981.

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